

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

08 APR 18 PM 2:00
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)	Docket No. FIFRA 07-2008-0010
)	
Main Street Lumber Company, Inc.)	CONSENT AGREEMENT
409 Main Street)	AND
Southwest City, MO 64863)	FINAL ORDER
)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Main Street Lumber Company, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is Main Street Lumber Company, Inc., a pesticide dealer, located at 409 Main Street, Southwest City, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Missouri.

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under FIFRA.

7. Section 2 (gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

8. The pesticide DI-ALL PAINT INSECTICIDE, EPA Reg. No. 34822-6, containing the active ingredient diazinon, was cancelled at the request of the registrant, Supreme Chemicals of Georgia, Inc., Cummings, Georgia, effective August 11, 2004, as published in the Federal Register dated August 11, 2004, (Volume 69, Number 154). This order provides for retail distribution or sale of existing stocks of diazinon outdoor use products until December 31, 2004. All sales, distribution, or holding for sale or distribution after the December 31, 2004, date will be in violation of FIFRA.

9. On or about March 7, 2006, and March 22, 2006, a representative of the Missouri Department of Agriculture (MDA) conducted marketplace inspections at Respondent's retail store at 409 Main Street, Southwest City, Missouri, for the purpose of collecting information on the sale and distribution of cancelled pesticides. A state Stop Sale Use, or Removal Order (SSURO) was placed on five one-ounce containers of DI-ALL PAINT INSECTICIDE, EPA Reg. No. 34822-6, that were packaged, labeled, and being held for sale. A statement collected during the March 7, 2006, inspection, states the product has been on the store shelves since July 2002.

10. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for sale or distribution of a pesticide whose registration had been canceled.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §§ 136l, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Five Hundred Dollars (\$500.00).

8. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashiers or certified check, a civil penalty, for the violations cited herein, in the amount of Five Hundred Dollars (\$500.00). Payment will be made within thirty (30) days of the effective date of this Order.

9. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

10. The payment shall reference Docket Number, FIFRA 07-2008-0010 and In the Matter of Main Street Lumber Company, Inc. Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

11. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

12. Respondent understands that its failure to timely pay the mitigated civil penalty, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently five percent (5%) per annum for the period January 1, 2008 through December 31, 2008) on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of

the due date.

13. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. Respondent will provide to the Southwest City Volunteer Fire Department the following items:

(a) Fifteen IC-P50/60 7.4 V 1800mAh Lilon batteries at a cost of \$52.15 each for a total cost of \$782.25;

(b) Ten Vertex VX-150-160/180/210 Portable Radio batteries (NiCd 1100 mAh) at a cost of \$32.99 each for a total cost of \$329.90;

(c) Four NS Spill Control Hazmat Duffel Spill Kits at a cost of \$99.99 each for a total of \$399.96.

14. Respondent will commence the SEP within 30 days of the effective date of the Consent Agreement and Final Order. Respondent will complete the project 90 days after the project start date. A SEP completion report will be submitted within 90 days after the completion of the project. The SEP completion report will be sent to:

Mark Leshner
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

15. The total expenditure for the SEP shall not be less than \$1512.00. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

16. (a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$2,000.00

(ii) If the SEP is not completed in accordance with paragraphs 13 through 15 above, but the EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with paragraphs 13 through 15 above, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$1,500.00.

(iv) If the SEP is completed in accordance with paragraphs 13 through 15 above, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.

(c) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Interest and late charges shall be paid as stated in paragraph 12 herein.

(d) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

17. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

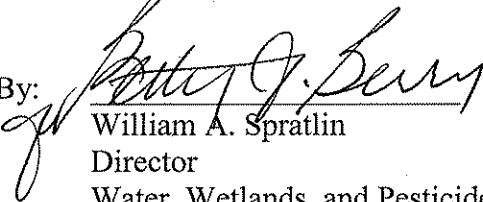
18. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

19. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

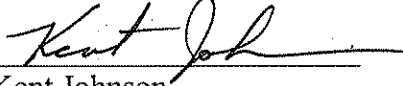
By:


William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date:

04/04/08

By:


Kent Johnson
Attorney
Office of Regional Counsel

Date:

4/2/08

RESPONDENT:

MAIN STREET LUMBER COMPANY, INC.

By:

Kandis Chandler

Title:

Owner

Date:

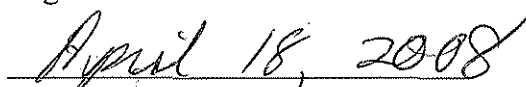
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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII


Date

IN THE MATTER OF Main Street Lumber Company, Inc., Respondent
Docket No. FIFRA-07-2008-0010

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Randy Chandler
Main Street Lumber Co., Inc.
409 Main Street
Southwest City, Missouri 64863

Dated: 4/18/08


Kathy Robinson
Hearing Clerk, Region 7